

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 29, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Baggarly v. DR Horton, Inc.**

Case No. CV CV 07-2737

Hearing Date: **July 29, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiffs' motion for monetary sanctions in the amount of \$39,407.75 is **DENIED**. (Code Civ. Proc., §§ 2023.010 *et. seq.*) The Court finds that Defendants are currently in compliance with the Court's August 20, 2009, Order, and it is not clear what is to be gained by this motion for sanctions other than to punish Defendants for past abuses. The Court is not allowed to issue sanctions as a punishment or to use past conduct that has already been considered by the court as the basis for additional sanctions. (*Andrus v. Estrada* (1995) 39 Cal.App.4th 1030, 1043; *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: **El-Badry v. Morris**

Case No. CV CV 09-782

Hearing Date: **July 29, 2010** **Department Fifteen** **9:00 a.m.**

Defendants' discovery motion: The unopposed motion to compel plaintiff to provide a further response to form interrogatory no. 2.6 is **GRANTED**. (Code Civ. Proc., § 2030.300, subd.(a)(1).)

The unopposed motion to compel plaintiff to provide a further response to form interrogatory no. 17.1(c) and (d) as it relates to request for admission nos. 1, 2, 4-7 and 11-13 is **GRANTED**. The unopposed motion to compel plaintiff to provide a further response to form interrogatory no. 17.1(a)-(d) as it relates to request for admission no. 10 is **GRANTED**. (Code Civ. Proc., § 2030.300, subd.(a)(1).) The motion to compel plaintiff to provide a further response to form interrogatory no. 17.1 is **DENIED** in all other respects.

Defendants shall serve Plaintiff with notice of the Court's ruling by July 30, 2010. Plaintiff shall serve verified, further responses to form interrogatory nos. 2.6 and 17.1 **by August 16, 2010.**

The unopposed motion to compel plaintiff to provide further responses to defendants' special interrogatories, set no. two is **DENIED**. Defendants' motion was not accompanied by a declaration stating facts showing a "reasonable and good faith attempt" at informal resolution after plaintiff served her April 19, 2010, special interrogatory responses. (Code Civ. Proc., § 2030.300, subd. (b).)

Defendants' motion for terminating or issue sanctions is **DENIED**. Code of Civil Procedure section 2030.300, subdivision (e) does not authorize such sanctions in this case. (Code Civ. Proc., § 2023.030.)

Defendants' motion for monetary sanctions is **GRANTED IN PART**. Plaintiff shall pay defendants \$790.00 in monetary sanctions by August 16, 2010. (Cal. Rules of Court, rule 3.1348.)

Defendants' motion to continue the trial: This motion is **DENIED WITHOUT PREJUDICE**. Defendants have not shown good cause for a continuance of the trial date. (Cal. Rules of Court, rule 3.1332(c).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: Flores v. Ramirez
Case No. CV CV 08-1979

Hearing Date: July 29, 2010 Department Fifteen 9:00 a.m.

Plaintiffs' motion to clarify the judgment is **GRANTED**. (*United States Liability Ins. Co. v. Haidinger-Hayes* (1970) 1 Cal.3d 586, 599.) Plaintiffs' request that the amended judgment be entered *nunc pro tunc* is **DENIED**. (Code Civ. Proc., §473.) Where "clerical error" is shown, the judgment is corrected *nunc pro tunc*; i.e., the correction dates back to when the judgment was entered. (*Ames v. Paley* (2001) 89 Cal.App.4th 668, 673.) This refers to inadvertent errors in entering or recording the judgment rather than in rendering the judgment (judicial error). (*In re Candelario* (1970) 3 Cal.3d 702, 705.) Here, there were no clerical errors in the entering or recording of the judgment.

The parties are **DIRECTED TO APPEAR** and present any supporting documentary evidence which will assist the Court in clarifying the exact amount Defendants were ordered to return to plaintiffs in paragraph 5 of the original judgment.

TENTATIVE RULING

Case: **Hernandez v. Yolo County**
Case No. CV CV 08-2690

Hearing Date: **July 29, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's evidentiary objections: Plaintiff's evidentiary objection nos. 1, 18 (to the extent that the declarant is referring to someone other than herself), 43, 47, 55, 58, 59, 66, 68, 70 (as to the first quoted sentence only), 73, 77, 81, 84, 88 (only as to the statement about whether Cheryl Boney had seen the letter before), 89, 91, 94, 96 (as to the phrase "other employees felt the same way" only), 97 (as to the phrase "other employees felt the same way" only), 99, 101, 108, 109, 113, 121, 136, 155, 156, 157, 159, 166 (as to the last two quoted sentences only), 171, 181-183, 184 (as to the last quoted sentence only), 185 (as to the second sentence only), 188, 191, 192, 193, 195, and 196 are **SUSTAINED**. All other evidentiary objections by the plaintiff are **OVERRULED**.

Defendants' evidentiary objections: Defendants' evidentiary objection nos. 1 (as to the last quoted sentence only), 2 (as to the phrase "was told that due to staff reductions filing of complaints were taking longer than normal" only), 4, 9, 11, 12 (as to the phrase "to touch me" only), 19, 21, 24, 26, 27, 29, 30, 31, 33, 35 (only as to the last two quoted sentences in paragraph 12), and 42 are **SUSTAINED**. All other evidentiary objections by the defendants are **OVERRULED**.

The Court did not consider any new evidence submitted with the Declaration of Cori R. Sarno filed on June 28, 2010.

First cause of action for harassment: The motion for summary adjudication as to the first cause of action is **GRANTED**. Even if the Court considers the 2006 conduct described in plaintiff's declaration, the totality of the circumstances presented, through competent evidence, does not raise a triable issue of fact about whether the alleged harassing conduct was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create a hostile work environment based on sex. (Declarations of Cheryl Boney, Mary Frances Collins, Rosie Hernandez, Marian Hull, Steve Jensen, Connie Melgoza, Stephanie Miller, Mindi Nunes, and Aleem Shafi; Exhibits to the Declaration of Cori Sarno filed on March 15, 2010; Exhibits to the Declaration of Andrea Rosa filed on May 14, 2010.) The cases upon which plaintiff relies are factually distinguishable.

Second cause of action for failure to prevent and remedy harassment: Because plaintiff did not raise a triable issue of fact concerning sexual harassment, the motion for summary adjudication as to the second cause of action is **GRANTED**. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 288-289.)

Third cause of action for retaliation: Plaintiff did not raise a triable issue of fact about whether she filed an administrative complaint under the Fair Employment and Housing Act ("FEHA") in relation to her retaliation claim *before* filing a civil action alleging retaliation under the FEHA. (Defendants' Separate Statement of Facts ("SSF") 23-24; Exhibit E to Sarno

Declaration; First amended complaint.) Assuming that plaintiff can cure this defect by filing an administrative complaint after she filed her civil lawsuit, Andrea Rosa's declaration does not establish that plaintiff's amended administrative complaint was actually filed. (Rosa Declaration ¶ 5.) Accordingly, the motion for summary adjudication as to the third cause of action is **GRANTED**. (Govt. Code, §§ 12960 and 12965; *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724; *Okoli v. Lockheed Technical Operations Co.* (1995) 36 Cal.App.4th 1607, 1616-1617.)

Fourth cause of action for defamation: Plaintiff does not deny receipt of the March 31, 2008, notice of rejection of claim. Plaintiff did not file her civil action within six months of the notice of rejection of her government claim. (Martinez Declaration ¶¶ 1-4 and Exhibits A and B thereto; Rosa Declaration ¶ 12; Defendants' SSF 43.) Accordingly, the motion for summary adjudication as to the fourth cause of action is **GRANTED**. (Govt. Code, §§ 900.4, 905, 915.2, 945.4, and 945.6; *Edgington v. County of San Diego* (1981) 118 Cal.App.3d 39, 46.)

Government Code section 915.2 does not require the public entity to provide a proof of service. Plaintiff bears the burden of pleading and proving estoppel. (*Romero v County of Santa Clara* (1970) 3 CA3d 700, 703.) Plaintiff has not shown that the facts she proposes to allege are sufficient to raise an estoppel. (*Rogers v. Board of Educ.* (1968) 261 Cal.App.2d 355; *Romero v. County of Santa Clara* (1970) Cal.App.3d 700.)

Fifth cause of action for intentional infliction of emotional distress: The motion for summary adjudication as to the fifth cause of action is **GRANTED**. As with the fourth cause of action, the fifth cause of action is barred under the Government Claims Act. (Govt. Code, §§ 900.4, 905, 915.2, 945.4, 945.6 and 950.2; First amended complaint ¶ 7.) Additionally, plaintiff has not established a triable issue of fact about whether Steve Jensen engaged in extreme and outrageous conduct.

Sixth cause of action for invasion of privacy: The motion for summary adjudication as to the sixth cause of action is **GRANTED**. This cause of action is barred under Government Code sections 815 and 900 *et seq.* (Govt. Code, §§ 815, 900.4, 905, 915.2, 945.4, 945.6 and 950.2; First amended complaint ¶ 7; *Miklosy v. Regents of Univ. of California* (2008) 44 Cal.4th 876, 899-900.) Plaintiff's opposition brief does not address the substance of her cause of action for invasion of privacy against Steve Jensen. Plaintiff failed to raise a triable issue of fact about the sixth cause of action as to defendant Jensen.

Seventh cause of action for assault and battery: The motion for summary adjudication as to the seventh cause of action is **GRANTED**. This cause of action is barred under Government Code sections 815 and 900 *et seq.* (Govt. Code, §§ 815, 900.4, 905, 915.2, 945.4, 945.6 and 950.2; First amended complaint ¶ 7; *Miklosy, supra*, at 899-900.)

Defendants are directed to prepare a formal order consistent with this ruling and in accordance with California Rules of Court, rule 3.1312 and Code of Civil Procedure section 437c, subdivision (g).

TENTATIVE RULING

Case: **People v. Turner**
 Case No. CV PT 10-1604

Hearing Date: **July 29, 2010** **Department Fifteen** **9:00 a.m.**

The People are **DIRECTED TO APPEAR** to inform the Court whether they intend to file a petition for forfeiture. (Health & Safety Code, §§ 11470 *et seq.*)